

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05-20087-JWL
)	
HOWARD L. COLLINS,)	
)	
Defendant.)	
)	

MEMORANDUM AND ORDER

On April 17, 2006, defendant Howard Collins pled guilty to distribution of more than five grams of cocaine base. He was sentenced to 70-months imprisonment and four years of supervised release. On July, 26, 2011, Mr. Collins was sentenced to 18-months imprisonment for violating the conditions of his supervised release. This matter is presently before the court on Mr. Collins' *pro se* motion requesting a copy of his sentencing transcript free of cost to aid in the preparation of a 28 U.S.C. § 2255 petition.

Under 28 U.S.C. § 753(f), the government shall pay the fees for transcripts in a § 2255 proceeding if the court "certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal." Because Mr. Collins has no current pending motion, the standard set forth in § 753(f) warrants denial of his request. *See Nortonsen v. Larimer County Dist. Court*, 2006

WL 1086437, at *1 (10th Cir. Apr. 26, 2006) (holding that post-conviction prisoners do not have an automatic right to free copies of court documents and concluding that they must first demonstrate a nonfrivolous claim); *United States v. Lewis*, 1994 WL 563442, at *1 (10th Cir. Oct. 14, 1994) (applying the § 753(f) standard to a defendant's request for documents). Moreover, a habeas petition must be filed to trigger the specific statute that grants indigent petitioners "documents" or "parts of the record" without cost. *See* 28 U.S.C. § 2250; *Lewis*, 1994 WL 563442, at *1.

Thus, Mr. Collins' request for transcripts fails because he has no motions currently pending before the court.

IT IS THEREFORE ORDERED BY THE COURT that defendant's motion for transcripts (doc. 117) is denied.

IT IS SO ORDERED this 10th day of January, 2012.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge